

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 30, 2005

AMENDED IN SENATE JUNE 8, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1511

Introduced by Assembly Member Evans
(Principal coauthors: Assembly Members Walters and Wolk)
(Principal coauthor: Senator Cox)

February 22, 2005

An act to amend Section 20133 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1511, as amended, Evans. Design-build contracting.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement.

Existing law, until January 1, 2006, authorizes certain counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions. These provisions require that contracts with a cost ranging from \$10,000,000 to \$20,000,000 be awarded to the lowest responsible bidder, and authorizes contracts costing more than \$20,000,000 to be awarded to the lowest responsible bidder or by best value.

This bill would extend the authorization for these contracts to January 1, 2011, would extend the authorization to contracts with

costs in excess of \$2,500,000, would authorize the Counties of Del Norte, Humboldt, Los Angeles, Mendocino, Napa, and Yolo to use the design-build process on certain projects, as defined, would delete the requirement that contracts with costs ranging from \$10,000,000 to \$20,000,000 be awarded to the lowest responsible bidder and instead authorize the counties to award projects using either the lowest responsible bidder or best value method, and would require counties utilizing the design-build method and the Legislative Analyst to submit specified reports by certain dates. This bill would also make legislative findings and declarations as to the necessity of a special statute for these counties.

This bill would incorporate additional changes in Section ~~21033~~ 20133 of the Public Contract Code, proposed by SB 287, to be operative only if SB 287 and this bill are both chaptered and become effective January 1, 2006, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20133 of the Public Contract Code is
2 amended to read:
3 20133. (a) (1) This section provides for an alternative
4 procedure on bidding on building construction projects in excess
5 of two million five hundred thousand dollars (\$2,500,000)
6 applicable only in the Counties of Alameda, Contra Costa, Del
7 Norte, Humboldt, Los Angeles, Mendocino, Napa, Santa Clara,
8 Solano, Sonoma, and Yolo, upon the approval of the appropriate
9 board of supervisors.
10 (2) These counties may award the project using either the
11 lowest responsible bidder or by best value.
12 (b) (1) It is the intent of the Legislature to enable these
13 counties to utilize cost-effective options for building and
14 modernizing public facilities. It is not the intent of the
15 Legislature to authorize this procedure for transportation
16 facilities, including, but not limited to, roads and bridges.
17 (2) The Legislature also finds and declares that utilizing a
18 design-build contract requires a clear understanding of the roles
19 and responsibilities of each participant in the design-build
20 process. The Legislature also finds that the cost-effective benefits

1 to the counties are achieved by shifting the liability and risk for
2 cost containment and project completion to the design-build
3 entity.

4 (3) It is the intent of the Legislature to provide an alternative
5 and optional procedure for bidding and building construction
6 projects for these counties.

7 (4) The design-build approach may be used, but is not limited
8 to use when it is anticipated that it will: reduce project cost,
9 expedite project completion, or provide design features not
10 achievable through the design-bid-build method.

11 (5) If the board of supervisors elects to proceed under this
12 section, the board of supervisors shall establish and enforce for
13 design-build projects a labor compliance program containing the
14 requirements outlined in Section 1771.5 of the Labor Code, or it
15 shall contract with a third party to operate a labor compliance
16 program containing the requirements outlined in Section 1771.5
17 of the Labor Code. This requirement shall not apply to any
18 project where the county or the design-build entity has entered
19 into any collective bargaining agreement or agreements that bind
20 all of the contractors performing work on the projects.

21 (c) As used in this section:

22 (1) "Best value" means a value determined by objective
23 criteria related to price, features, functions, and life cycle costs.

24 (2) "Design-build" means a procurement process in which
25 both the design and construction of a project are procured from a
26 single entity.

27 (3) "Design-build entity" means a partnership, corporation, or
28 other legal entity that is able to provide appropriately licensed
29 contracting, architectural, and engineering services as needed
30 pursuant to a design-build contract.

31 (4) "Project" means the construction of a building and
32 improvements directly related and necessary to the construction
33 of a building, but does not include the construction of other
34 infrastructure, including, but not limited to, streets and highways,
35 public rail transit, and water resources facilities and
36 infrastructure.

37 (d) Design-build projects shall progress in a four-step process,
38 as follows:

39 (1) (A) The county shall prepare a set of documents setting
40 forth the scope of the project. The documents may include, but

1 are not limited to, the size, type and desired design character of
2 the buildings and site, performance specifications covering the
3 quality of materials, equipment, and workmanship, preliminary
4 plans or building layouts, or any other information deemed
5 necessary to describe adequately the county's needs. The
6 performance specifications and any plans shall be prepared by a
7 design professional who is duly licensed and registered in
8 California.

9 (B) Any architect or engineer retained by the county to assist
10 in the development of the project specific documents shall not be
11 eligible to participate in the preparation of a bid with any
12 design-build entity for that project.

13 (2) (A) Based on the documents prepared in paragraph (1), the
14 county shall prepare a request for proposals that invites interested
15 parties to submit competitive sealed proposals in the manner
16 prescribed by the county. The request for proposals shall include,
17 but is not limited to, the following elements:

18 (i) Identification of the basic scope and needs of the project or
19 contract, the expected cost range, and other information deemed
20 necessary by the county to inform interested parties of the
21 contracting opportunity, to include the methodology that will be
22 used by the county to evaluate proposals and specifically if the
23 contract will be awarded to the lowest responsible bidder.

24 (ii) Significant factors which the county reasonably expects to
25 consider in evaluating proposals, including cost or price and all
26 nonprice-related factors.

27 (iii) The relative importance of weight assigned to each of the
28 factors identified in the request for proposals.

29 (B) With respect to clause (iii) of ~~paragraph~~ *subparagraph*
30 (A), if a nonweighted system is used, the agency shall
31 specifically disclose whether all evaluation factors other than
32 cost or price when combined are:

33 (i) Significantly more important than cost or price.

34 (ii) Approximately equal in importance to cost or price.

35 (iii) Significantly less important than cost or price.

36 (C) If the county chooses to reserve the right to hold
37 discussions or negotiations with responsive bidders, it shall so
38 specify in the request for proposal and shall publish separately or
39 incorporate into the request for proposal applicable rules and

1 procedures to be observed by the county to ensure that any
2 discussions or negotiations are conducted in good faith.

3 (3) (A) The county shall establish a procedure to prequalify
4 design-build entities using a standard questionnaire developed by
5 the county. In preparing the questionnaire, the county shall
6 consult with the construction industry, including representatives
7 of the building trades and surety industry. This questionnaire
8 shall require information including, but not limited to, all of the
9 following:

10 (i) If the design-build entity is a partnership, limited
11 partnership, or other association, a listing of all of the partners,
12 general partners, or association members known at the time of
13 bid submission who will participate in the design-build contract,
14 including, but not limited to, mechanical subcontractors.

15 (ii) Evidence that the members of the design-build entity have
16 completed, or demonstrated the experience, competency,
17 capability, and capacity to complete projects of similar size,
18 scope, or complexity, and that proposed key personnel have
19 sufficient experience and training to competently manage and
20 complete the design and construction of the project, as well as a
21 financial statement that assures the county that the design-build
22 entity has the capacity to complete the project.

23 (iii) The licenses, registration, and credentials required to
24 design and construct the project, including information on the
25 revocation or suspension of any license, credential, or
26 registration.

27 (iv) Evidence that establishes that the design-build entity has
28 the capacity to obtain all required payment and performance
29 bonding, liability insurance, and errors and omissions insurance.

30 (v) Any prior serious or willful violation of the California
31 Occupational Safety and Health Act of 1973, contained in Part 1
32 (commencing with Section 6300) of Division 5 of the Labor
33 Code or the federal Occupational Safety and Health Act of 1970
34 (Public Law 91-596), settled against any member of the
35 design-build entity, and information concerning workers'
36 compensation experience history and worker safety program.

37 (vi) Information concerning any debarment, disqualification,
38 or removal from a federal, state, or local government public
39 works project. Any instance where an entity, its owners, officers,
40 or managing employees submitted a bid on a public works

1 project and were found to be nonresponsive, or were found by an
2 awarding body not to be a responsible bidder.

3 (vii) Any instance where the entity, its owner, officers, or
4 managing employees defaulted on a construction contract.

5 (viii) Any violations of the Contractors' State License Law
6 (Chapter 9 (commencing with Section 7000) of Division 3 of the
7 Business and Professions Code), excluding alleged violations of
8 federal or state law including the payment of wages, benefits,
9 apprenticeship requirements, or personal income tax withholding,
10 or of Federal Insurance Contribution Act (FICA) withholding
11 requirements settled against any member of the design-build
12 entity.

13 (ix) Information concerning the bankruptcy or receivership of
14 any member of the design-build entity, including information
15 concerning any work completed by a surety.

16 (x) Information concerning all settled adverse claims, disputes,
17 or lawsuits between the owner of a public works project and any
18 member of the design-build entity during the five years preceding
19 submission of a bid pursuant to this section, in which the claim,
20 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
21 Information shall also be provided concerning any work
22 completed by a surety during this period.

23 (xi) In the case of a partnership or other association, that is not
24 a legal entity, a copy of the agreement creating the partnership or
25 association and specifying that all partners or association
26 members agree to be fully liable for the performance under the
27 design-build contract.

28 (B) The information required pursuant to this subdivision shall
29 be verified under oath by the entity and its members in the
30 manner in which civil pleadings in civil actions are verified.
31 Information that is not a public record pursuant to the California
32 Public Records Act (Chapter 3.5, Division 7, Title 1 of the
33 Government Code) shall not be open to public inspection.

34 (4) The county shall establish a procedure for final selection of
35 the design-build entity. Selection shall be based on either of the
36 following criteria:

37 (A) A competitive bidding process resulting in lump-sum bids
38 by the prequalified design-build entities. Awards shall be made
39 to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of subdivision (d). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors; price, technical design and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record. ~~Each of these factors shall be equally weighed.~~

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical

standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

1 (j) Nothing in this section is intended to affect, expand, alter,
2 or limit any rights or remedies otherwise available at law.

3 (k) (1) If the county elects to award a project pursuant to this
4 section retention proceeds withheld by the county from the
5 design-build entity shall not exceed 5 percent if a performance
6 and payment bond, issued by an admitted surety insurer, is
7 required in the solicitation of bids.

8 (2) In a contract between the design-build entity and the
9 subcontractor, and in a contract between a subcontractor and any
10 subcontractor thereunder, the percentage of the retention
11 proceeds withheld may not exceed the percentage specified in the
12 contract between the county and the design-build entity. If the
13 design-build entity provides written notice to any subcontractor
14 who is not a member of the design-build entity, prior to or at the
15 time the bid is requested, that a bond may be required and the
16 subcontractor subsequently is unable or refuses to furnish a bond
17 to the design-build entity, then the design-build entity may
18 withhold retention proceeds in excess of the percentage specified
19 in the contract between the county and the design-build entity
20 from any payment made by the design-build entity to the
21 subcontractor.

22 (l) Each county that elects to proceed under this section and
23 uses the design-build method on a public works project shall
24 submit to the Legislative Analyst's Office, before December 1,
25 2009, a report containing a description of each public works
26 project procured through the design-build process and completed
27 after November 1, 2004, and before November 1, 2009. The
28 report shall include, but shall not be limited to, all of the
29 following information:

- 30 (1) The type of project.
31 (2) The gross square footage of the project.
32 (3) The design-build entity that was awarded the project.
33 (4) The estimated and actual length of time to complete the
34 project.
35 (5) The estimated and actual project costs.
36 (6) A description of any written protests concerning any aspect
37 of the solicitation, bid, proposal, or award of the design-build
38 project, including the resolution of the protests.
39 (7) An assessment of the prequalification process and criteria.

1 (8) An assessment of the effect of retaining 5-percent retention
2 on the project.

3 (9) A description of the Labor Force Compliance Program and
4 an assessment of the project impact, where required.

5 (10) A description of the method used to award the contract. If
6 best value was the method, the report shall describe the factors
7 used to evaluate the bid, including the weighting of each factor
8 and an assessment of the effectiveness of the methodology.

9 (11) An assessment of the project impact of “skilled labor
10 force availability.”

11 (12) An assessment of the design-build dollar limits on county
12 projects. This assessment shall include projects where the county
13 wanted to use design-build and was precluded by the dollar
14 limitation. This assessment shall also include projects where the
15 best value method of awarding contracts was not used due to
16 dollar limitations.

17 (13) An assessment of the most appropriate uses for the
18 design-build approach.

19 (m) Any county named in subdivision (a) that elects to not use
20 the authority granted by this section may submit a report to the
21 Legislative Analyst’s Office explaining why the county elected
22 to not use the design-build method.

23 (n) On or before January 1, 2010, the Legislative Analyst shall
24 report to the Legislature on the use of the design-build method by
25 counties pursuant to this section, including the information listed
26 in subdivision (l). The report may include recommendations for
27 modifying or extending this section.

28 (o) This section shall remain in effect only until January 1,
29 2011, and as of that date is repealed, unless a later enacted
30 statute, that is enacted before January 1, 2011, deletes or extends
31 that date.

32 SEC. 1.5. Section 20133 of the Public Contract Code is
33 amended to read:

34 20133. (a) (1) This section provides for an alternative
35 procedure on bidding on building construction projects in excess
36 of two million five hundred thousand dollars (\$2,500,000)
37 applicable only in the Counties of Alameda, Butte, Contra Costa,
38 Del Norte, El Dorado, Fresno, Humboldt, Kings, Los Angeles,
39 Madera, Mariposa, Mendocino, Merced, Monterey, Napa,
40 Orange, Placer, Sacramento, San Diego, San Joaquin, San Luis

1 Obispo, Santa Clara, Shasta, Siskiyou, Solano, Sonoma,
2 Stanislaus, Tulare, Yolo, and Yuba, upon approval of the
3 appropriate board of supervisors.

4 (2) These counties may award the project using either the
5 lowest responsible bidder or by best value.

6 (b) (1) It is the intent of the Legislature to enable these
7 counties to utilize cost-effective options for building and
8 modernizing public facilities. It is not the intent of the
9 Legislature to authorize this procedure for transportation
10 facilities, including, but not limited to, roads and bridges.

11 (2) The Legislature also finds and declares that utilizing a
12 design-build contract requires a clear understanding of the roles
13 and responsibilities of each participant in the design-build
14 process. The Legislature also finds that the cost-effective benefits
15 to the counties are achieved by shifting the liability and risk for
16 cost containment and project completion to the design-build
17 entity.

18 (3) It is the intent of the Legislature to provide an alternative
19 and optional procedure for bidding and building construction
20 projects for these counties.

21 (4) The design-build approach may be used, but is not limited
22 to use when it is anticipated that it will: reduce project cost,
23 expedite project completion, or provide design features not
24 achievable through the design-bid-build method.

25 (5) If the board of supervisors elects to proceed under this
26 section, the board of supervisors shall establish and enforce for
27 design-build projects a labor compliance program containing the
28 requirements outlined in Section 1771.5 of the Labor Code, or it
29 shall contract with a third party to operate a labor compliance
30 program containing the requirements outlined in Section 1771.5
31 of the Labor Code. This requirement shall not apply to any
32 project where the county or the design-build entity has entered
33 into any collective bargaining agreement or agreements that bind
34 all of the contractors performing work on the projects.

35 (c) As used in this section:

36 (1) "Best value" means a value determined by objective
37 criteria related to price, features, functions, and life-cycle costs.

38 (2) "Design-build" means a procurement process in which
39 both the design and construction of a project are procured from a
40 single entity.

1 (3) “Design-build entity” means a partnership, corporation, or
2 other legal entity that is able to provide appropriately licensed
3 contracting, architectural, and engineering services as needed
4 pursuant to a design-build contract.

5 (4) “Project” means the construction of a building and
6 improvements directly related to the construction of a building,
7 but does not include the construction of other infrastructure,
8 including, but not limited to, streets and highways, public rail
9 transit, or water resources facilities and infrastructure.

10 (d) Design-build projects shall progress in a four-step process,
11 as follows:

12 (1) (A) The county shall prepare a set of documents setting
13 forth the scope of the project. The documents may include, but
14 are not limited to, the size, type and desired design character of
15 the buildings and site, performance specifications covering the
16 quality of materials, equipment, and workmanship, preliminary
17 plans or building layouts, or any other information deemed
18 necessary to describe adequately the county’s needs. The
19 performance specifications and any plans shall be prepared by a
20 design professional who is duly licensed and registered in
21 California.

22 (B) Any architect or engineer retained by the county to assist
23 in the development of the project-specific documents shall not be
24 eligible to participate in the preparation of a bid with any
25 design-build entity for that project.

26 (2) (A) Based on the documents prepared in paragraph (1), the
27 county shall prepare a request for proposals that invites interested
28 parties to submit competitive sealed proposals in the manner
29 prescribed by the county. The request for proposals shall include,
30 but is not limited to, the following elements:

31 (i) Identification of the basic scope and needs of the project or
32 contract, the expected cost range, and other information deemed
33 necessary by the county to inform interested parties of the
34 contracting opportunity, to include the methodology that will be
35 used by the county to evaluate proposals and specifically if the
36 contract will be awarded to the lowest responsible bidder.

37 (ii) Significant factors which the county reasonably expects to
38 consider in evaluating proposals, including cost or price and all
39 nonprice-related factors.

1 (iii) The relative importance of weight assigned to each of the
2 factors identified in the request for proposals.

3 (B) With respect to clause (iii) of ~~paragraph~~ *subparagraph*
4 (A), if a nonweighted system is used, the agency shall
5 specifically disclose whether all evaluation factors other than
6 cost or price when combined are:

7 (i) Significantly more important than cost or price.

8 (ii) Approximately equal in importance to cost or price.

9 (iii) Significantly less important than cost or price.

10 (C) If the county chooses to reserve the right to hold
11 discussions or negotiations with responsive bidders, it shall so
12 specify in the request for proposal and shall publish separately or
13 incorporate into the request for proposal applicable rules and
14 procedures to be observed by the county to ensure that any
15 discussions or negotiations are conducted in good faith.

16 (3) (A) The county shall establish a procedure to prequalify
17 design-build entities using a standard questionnaire developed by
18 the county. In preparing the questionnaire, the county shall
19 consult with the construction industry, including representatives
20 of the building trades and surety industry. This questionnaire
21 shall require information including, but not limited to, all of the
22 following:

23 (i) If the design-build entity is a partnership, limited
24 partnership, or other association, a listing of all of the partners,
25 general partners, or association members known at the time of
26 bid submission who will participate in the design-build contract,
27 including, but not limited to, mechanical subcontractors.

28 (ii) Evidence that the members of the design-build entity have
29 completed, or demonstrated the experience, competency,
30 capability, and capacity to complete projects of similar size,
31 scope, or complexity, and that proposed key personnel have
32 sufficient experience and training to competently manage and
33 complete the design and construction of the project, as well as a
34 financial statement that assures the county that the design-build
35 entity has the capacity to complete the project.

36 (iii) The licenses, registration, and credentials required to
37 design and construct the project, including information on the
38 revocation or suspension of any license, credential, or
39 registration.

- 1 (iv) Evidence that establishes that the design-build entity has
2 the capacity to obtain all required payment and performance
3 bonding, liability insurance, and errors and omissions insurance.
- 4 (v) Any prior serious or willful violation of the California
5 Occupational Safety and Health Act of 1973, contained in Part 1
6 (commencing with Section 6300) of Division 5 of the Labor
7 Code or the federal Occupational Safety and Health Act of 1970
8 (Public Law 91-596), settled against any member of the
9 design-build entity, and information concerning workers'
10 compensation experience history and worker safety program.
- 11 (vi) Information concerning any debarment, disqualification,
12 or removal from a federal, state, or local government public
13 works project. Any instance where an entity, its owners, officers,
14 or managing employees submitted a bid on a public works
15 project and were found to be nonresponsive, or were found by an
16 awarding body not to be a responsible bidder.
- 17 (vii) Any instance where the entity, its owner, officers, or
18 managing employees defaulted on a construction contract.
- 19 (viii) Any violations of the Contractors' State License Law
20 (Chapter 9 (commencing with Section 7000) of Division 3 of the
21 Business and Professions Code), excluding alleged violations of
22 federal or state law including the payment of wages, benefits,
23 apprenticeship requirements, or personal income tax withholding,
24 or of Federal Insurance Contribution Act (FICA) withholding
25 requirements settled against any member of the design-build
26 entity.
- 27 (ix) Information concerning the bankruptcy or receivership of
28 any member of the design-build entity, including information
29 concerning any work completed by a surety.
- 30 (x) Information concerning all settled adverse claims, disputes,
31 or lawsuits between the owner of a public works project and any
32 member of the design-build entity during the five years preceding
33 submission of a bid pursuant to this section, in which the claim,
34 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
35 Information shall also be provided concerning any work
36 completed by a surety during this period.
- 37 (xi) In the case of a partnership or other association, that is not
38 a legal entity, a copy of the agreement creating the partnership or
39 association and specifying that all partners or association

1 members agree to be fully liable for the performance under the
2 design-build contract.

3 (B) The information required pursuant to this subdivision shall
4 be verified under oath by the entity and its members in the
5 manner in which civil pleadings in civil actions are verified.
6 Information that is not a public record pursuant to the California
7 Public Records Act (Chapter 3.5, Division 7, Title 1 of the
8 Government Code) shall not be open to public inspection.

9 (4) The county shall establish a procedure for final selection of
10 the design-build entity. Selection shall be based on either of the
11 following criteria:

12 (A) A competitive bidding process resulting in lump-sum bids
13 by the prequalified design-build entities. Awards shall be made
14 to the lowest responsible bidder.

15 (B) A county may use a design-build competition based upon
16 best value and other criteria set forth in paragraph (2) of
17 subdivision (d). The design-build competition shall include the
18 following elements:

19 (i) Competitive proposals shall be evaluated by using only the
20 criteria and selection procedures specifically identified in the
21 request for proposal. However, the following minimum factors
22 shall each represent at least 10 percent of the total weight of
23 consideration given to all criteria factors; price, technical design
24 and construction expertise, life-cycle costs over 15 years or more,
25 skilled labor force availability, and acceptable safety record.

26 (ii) Once the evaluation is complete, the top three responsive
27 bidders shall be ranked sequentially from the most advantageous
28 to the least.

29 (iii) The award of the contract shall be made to the responsible
30 bidder whose proposal is determined, in writing, to be the most
31 advantageous.

32 (iv) Notwithstanding any provision of this code, upon issuance
33 of a contract award, the county shall publicly announce its award,
34 identifying the contractor to whom the award is made, along with
35 a written decision supporting its contract award and stating the
36 basis of the award. The notice of award shall also include the
37 county's second and third ranked design-build entities.

38 (v) For the purposes of this paragraph, "skilled labor force
39 availability" shall be determined by the existence of an
40 agreement with a registered apprenticeship program, approved by

1 the California Apprenticeship Council, which has graduated
2 apprentices in each of the preceding five years. This graduation
3 requirement shall not apply to programs providing apprenticeship
4 training for any craft that has been deemed by the Department of
5 Labor and the Department of Industrial Relations to be an
6 apprenticeable craft in the five years prior to enactment of this
7 act.

8 (vi) For the purposes of this paragraph, a bidder's "safety
9 record" shall be deemed "acceptable" if their experience
10 modification rate for the most recent three-year period is an
11 average of 1.00 or less, and their average Total Recordable
12 Injury/Illness rate and average lost work rate for the most recent
13 three-year period does not exceed the applicable statistical
14 standards for its business category or if the bidder is a party to an
15 alternative dispute resolution system as provided for in Section
16 3201.5 of the Labor Code.

17 (e) (1) Any design-build entity that is selected to design and
18 build a project pursuant to this section shall possess or obtain
19 sufficient bonding to cover the contract amount for nondesign
20 services, and errors and omission insurance coverage sufficient to
21 cover all design and architectural services provided in the
22 contract. This section does not prohibit a general or engineering
23 contractor from being designated the lead entity on a
24 design-build entity for the purposes of purchasing necessary
25 bonding to cover the activities of the design-build entity.

26 (2) Any payment or performance bond written for the
27 purposes of this section shall be written using a bond form
28 developed by the county.

29 (f) All subcontractors that were not listed by the design-build
30 entity in accordance with clause (i) of subparagraph (A) of
31 paragraph (3) of subdivision (d) shall be awarded by the
32 design-build entity in accordance with the design-build process
33 set forth by the county in the design-build package. All
34 subcontractors bidding on contracts pursuant to this section shall
35 be afforded the protections contained in Chapter 4 (commencing
36 with Section 4100) of Part 1. The design-build entity shall do
37 both of the following:

38 (1) Provide public notice of the availability of work to be
39 subcontracted in accordance with the publication requirements
40 applicable to the competitive bidding process of the county.

1 (2) Provide a fixed date and time on which the subcontracted
2 work will be awarded in accordance with the procedure
3 established pursuant to this section.

4 (g) The minimum performance criteria and design standards
5 established pursuant to paragraph (1) of subdivision (d) shall be
6 adhered to by the design-build entity. Any deviations from those
7 standards may only be allowed by written consent of the county.

8 (h) The county may retain the services of a design professional
9 or construction project manager, or both, throughout the course
10 of the project in order to ensure compliance with this section.

11 (i) Contracts awarded pursuant to this section shall be valid
12 until the project is completed.

13 (j) Nothing in this section is intended to affect, expand, alter,
14 or limit any rights or remedies otherwise available at law.

15 (k) (1) If the county elects to award a project pursuant to this
16 section retention proceeds withheld by the county from the
17 design-build entity shall not exceed 5 percent if a performance
18 and payment bond, issued by an admitted surety insurer, is
19 required in the solicitation of bids.

20 (2) In a contract between the design-build entity and the
21 subcontractor, and in a contract between a subcontractor and any
22 subcontractor thereunder, the percentage of the retention
23 proceeds withheld may not exceed the percentage specified in the
24 contract between the county and the design-build entity. If the
25 design-build entity provides written notice to any subcontractor
26 who is not a member of the design-build entity, prior to or at the
27 time the bid is requested, that a bond may be required and the
28 subcontractor subsequently is unable or refuses to furnish a bond
29 to the design-build entity, then the design-build entity may
30 withhold retention proceeds in excess of the percentage specified
31 in the contract between the county and the design-build entity
32 from any payment made by the design-build entity to the
33 subcontractor.

34 (l) Each county that elects to proceed under this section and
35 uses the design-build method on a public works project shall
36 submit to the Legislative Analyst's Office before December 1,
37 2009, a report containing a description of each public works
38 project procured through the design-build process and completed
39 after November 1, 2004, and before November 1, 2009. The

- 1 report shall include, but shall not be limited to, all of the
2 following information:
- 3 (1) The type of project.
 - 4 (2) The gross square footage of the project.
 - 5 (3) The design-build entity that was awarded the project.
 - 6 (4) The estimated and actual length of time to complete the
7 project.
 - 8 (5) The estimated and actual project costs.
 - 9 (6) A description of any written protests concerning any aspect
10 of the solicitation, bid, proposal, or award of the design-build
11 project, including the resolution of the protests.
 - 12 (7) An assessment of the prequalification process and criteria.
 - 13 (8) An assessment of the effect of retaining 5-percent retention
14 on the project.
 - 15 (9) A description of the Labor Force Compliance Program and
16 an assessment of the project impact, where required.
 - 17 (10) A description of the method used to award the contract. If
18 best value was the method, the report shall describe the factors
19 used to evaluate the bid, including the weighting of each factor
20 and an assessment of the effectiveness of the methodology.
 - 21 (11) An assessment of the project impact of “skilled labor
22 force availability.”
 - 23 (12) An assessment of the design-build dollar limits on county
24 projects. This assessment shall include projects where the county
25 wanted to use design-build and was precluded by the dollar
26 limitation. This assessment shall also include projects where the
27 best value method was not used due to dollar limitations.
 - 28 (13) An assessment of the most appropriate uses for the
29 design-build approach.
 - 30 (m) Any county named in subdivision (a) that elects to not use
31 the authority granted by this section may submit a report to the
32 Legislative Analyst’s Office explaining why the county elected
33 to not use the design-build method.
 - 34 (n) On or before January 1, 2010, the Legislative Analyst shall
35 report to the Legislature on the use of the design-build method by
36 counties pursuant to this section, including the information listed
37 in subdivision (l). The report may include recommendations for
38 modifying or extending this section.
 - 39 (o) This section shall remain in effect only until January 1,
40 2011, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2011, deletes or extends
2 that date.

3 SEC. 2. The Legislature finds and declares that a special law
4 is necessary and that a general law cannot be made applicable
5 within the meaning of Section 16 of Article IV of the California
6 Constitution because of the unique need to build and modernize
7 public facilities in a cost-effective manner in the Counties of Del
8 Norte, Humboldt, Los Angeles, Mendocino, Napa, and Yolo.

9 SEC. 2.5. The Legislature finds and declares that a special
10 law is necessary and that a general law cannot be made
11 applicable within the meaning of Section 16 of Article IV of the
12 California Constitution because of the unique need to build and
13 modernize public facilities in a cost-effective manner in Butte,
14 Del Norte, El Dorado, Fresno, Humboldt, Kings, Los Angeles,
15 Madera, Mariposa, Mendocino, Merced, Monterey, Napa,
16 Orange, Placer, San Diego, San Joaquin, San Luis Obispo,
17 Shasta, Siskiyou, Stanislaus, Yolo, and Yuba Counties.

18 SEC. 3. Section 1.5 of this bill incorporates amendments to
19 Section 20133 of the Public Contract Code proposed by both this
20 bill and SB 287. It shall only become operative if (1) both bills
21 are enacted and become effective on or before January 1, 2006,
22 (2) each bill amends Section 20133 of the Public Contract Code,
23 and (3) this bill is enacted after SB 287, in which case ~~Section~~
24 ~~1.5 of this bill shall not become operative. Sections 1 and 2 of~~
25 ~~this bill shall not become operative and Sections 1.5 and 2.5 of~~
26 ~~this bill shall become operative.~~

27 SEC. 4. It is the intent of the Legislature that this bill shall not
28 become operative unless both this bill and Senate Bill 287 are
29 both chaptered and become effective January 1, 2006. If Senate
30 Bill 287 is not chaptered and does not become effective January
31 1, 2006, this bill shall not become operative.